IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

GABRIEL SALAS,	:	
	:	
Plaintiff,	:	
	:	
v.	:	CIVIL ACTION NO.
	:	1:17-CV-0232-ODE-JSA
HOOVER FOODS, INC., d/b/a Wendy's,	:	
	:	
	:	
Defendant.	:	

O R D E R

The above-captioned action is before the Court on the Report and Recommendation [9] dated May 17, 2017, in which the undersigned recommended that this action be dismissed for want of prosecution, pursuant to Local Rule 41.3. For the reasons set forth below, the undersigned **VACATES** the Report and Recommendation [9], and **DIRECTS** the Clerk to reinstate the reference to the undersigned Magistrate Judge for pretrial proceedings pursuant to Standing Order No. 14-01, NDGa.

I. BACKGROUND

Plaintiff Gabriel Salas filed the Complaint in this action through counsel on January 19, 2017. Plaintiff claims that Defendant Hoover Foods, Inc., d/b/a Wendy's, his employer, discriminated against him on the basis of his sex and national origin, and retaliated against him for complaining about discrimination, in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e, *et seq*. (“Title VII”). Local Rule 3.3 requires counsel for all private parties to file a Certificate of Interested Persons and Corporate Disclosure Statement at the time of first appearance. *See* LR 3.3, NDGa. Although Defendant complied with this rule by filing a Certificate of Interested Persons and Corporate Disclosure Statement [5] on the same day that it filed its Answer [4], the Plaintiff failed to do so.

The Court then issued two separate Orders requiring the Plaintiff to comply with the Local Rules by filing a Certificate of Interested Persons and Corporate Disclosure Statement. *See* Order [7] dated March 21, 2017 (“March 21 Order”), and Order [8] dated April 13, 2017 (“April 13 Order”). In the March 21 Order, Plaintiff was ordered to file a Certificate of Interested Persons and Corporate Disclosure Statement within fourteen days of the date of the Order. March 21 Order [7] at 3. In the April 13 Order, Plaintiff was ordered to file a Certificate of Interested Persons and Corporate Disclosure Statement within seven days of the date of the Order. April 13 Order [8] at 1. In the April 13 Order, Plaintiff was further advised that, if he failed to file a Certificate of Interested Persons and Corporate Disclosure Statement within seven days, he was ordered to show cause in writing within fourteen days of the date of that Order why this case should not be dismissed for want of prosecution. *See* April 13 Order at 1; LR 41.3(A)(2), NDGa.

Plaintiff failed to comply with either the March 21 Order or the April 13 Order. As a result of the Plaintiff's failure to comply with two separate Orders of the Court, the undersigned issued a Report and Recommendation [9] dated May 17, 2017, recommending that this action be dismissed for want of prosecution, pursuant to Local Rule 41.3. *See* LR 41.3(A)(2), NDGa (the Court may dismiss a civil case for want of prosecution if "[a] plaintiff shall, after notice, . . . fail or refuse to obey a lawful order of the court in the case"). In the Report and Recommendation, the undersigned also noted that the discovery period in this case had been ongoing for two months and no certificate of service has been filed with the Court showing that any discovery requests had been served, further indicating that Plaintiff had failed to prosecute this action. *See* LR 5.4 and 26.3, NDGa (the party responsible for service of any discovery material must file a certificate of service with the Clerk of court indicating the date of service).

On May 31, 2017, the Plaintiff filed two separate Objections [11][12] to the Report and Recommendation. Both Objections appear to be identical, except that the second Objection [12] has attached numerous exhibits not included with the first

Objection [11]. Significantly, Plaintiff does not dispute that he failed to comply with Local Rule 3.3. Nor does he dispute that he failed to comply with two separate Orders from the Court. Instead, Plaintiff's counsel states that this is the first case he has litigated in Federal Court in many years, and he simply "missed these Orders among the voluminous emails in his e-mail in-box." Pl. Obj. [11] at 4.

In his Objections, Plaintiff further contends that he has been vigilant in prosecuting this action as he "prepared thorough discovery responses and timely served them on May 16, 2017." *Id.* at 3. Plaintiff claims that he served further discovery requests on May 31, 2017, and has also served Defendant with notices of depositions. *Id.* Plaintiff, however, does not offer an explanation for his failure to file any Certificate of Service with respect to those discovery requests, as required by the Local Rules of this Court. *See* LR 5.4 and 26.3, NDGa. On the same day he filed his two Objections, Plaintiff also filed a Certificate of Interested Persons and Corporate Disclosure Statement [13].

II. DISCUSSION

Although the Plaintiff does not dispute that he failed to comply with Local Rule 3.3, and failed to comply with two separate Orders of the Court, he has now complied with Local Rule 3.3, albeit more than four months late, by filing a Certificate of Interested Persons and Corporate Disclosure Statement [13]. Furthermore, the Plaintiff has also established that he has served multiple discovery requests on the Defendant. *See* Objections [11][12] and exhibits. The Court thus finds that the Plaintiff has not failed to prosecute this action, and further finds that the Defendant has suffered no prejudice from the Plaintiff's failure to comply with Local Rule 3.3 or the Orders of the Court.

Accordingly, the Report and Recommendation [9] dated May 17, 2017, is **VACATED**, and the Clerk is **DIRECTED** to reinstate the reference to the undersigned Magistrate Judge for pretrial proceedings pursuant to Standing Order No. 14-01, NDGa.

Counsel for Plaintiff is admonished, however, that the Local Rules of this Court are not mere suggestions that he can continue to ignore without penalty. Further, counsel is expected to be familiar with the procedural rules and deadlines that apply in this Court, including the Local Rules, and is expected to be aware of the pleadings, motions, and Orders that may be served electronically via the Court's ECF system. Ignorance of these matters is generally not considered to be good cause to explain a failure to act as required.

III. CONCLUSION

For the reasons discussed above, the Report and Recommendation [9] dated May 17, 2017, is **VACATED**. The Clerk is **DIRECTED** to reinstate the reference to the undersigned Magistrate Judge for pretrial proceedings pursuant to Standing Order No. 14-01, NDGa.

IT IS SO ORDERED this 2nd day of June, 2017.

JUSTIN S. ANAND
UNITED STATES MAGISTRATE JUDGE